

**MINUTES
BOARD OF ADJUSTMENT
CITY OF DELRAY BEACH**

MEETING DATE: December 7, 2023

MEETING PLACE: City Commission Chambers

1. CALL TO ORDER

The meeting was called to order by William Bennett, Assistant City Attorney, at 5:01 p.m.

2. ROLL CALL

A quorum was present.

Members present: Alek Hayes, William Schloesser, Richard Kasser, Seth Mitchell and Aura Ramirez.

Members absent: Brenda Cullinan and Mike Miles.

Staff Present: William Bennett, Assistant City Attorney; Amy Alvarez, Assistant Development Services Director; Alexia Howald, Senior Planner; Jennifer Buce, Planner; and, Diane Miller, Board Secretary.

3. APPROVAL OF AGENDA

Approval of Agenda will become Item 3.

Election of Officers will become Item 4.

Motion to approve the amended agenda of December 7, 2023, made by Seth Mitchell and seconded by Alex Hayes.

Motion Carried 5-0

4. ELECTION OF OFFICERS

William Bennett announced that the next item on the Agenda will be Election of Officers and announced the process of electing officers.

Motion made by Seth Mitchell to nominate Alek Hayes as Chair and seconded by Jesse Schloesser

Motion Carried 5-0

Motion made by Richard Kasser to nominate Richard Kasser as Vice Chair and seconded by Alek Hayes.

Motion Carried 5-0

Motion made by Seth Mitchell to nominate Seth Mitchell as 2nd Vice Chair and seconded by Alek Hayes.

Motion Carried 5-0

5. MINUTES

None

6. SWEARING IN OF THE PUBLIC

Alek Hayes read the quasi-judicial rules for the City of Delray Beach and Ms. Miller swore to all who wished to give testimony.

7. COMMENTS FROM THE PUBLIC

Christina Nowicki-WGI-Applicant is asking for reconsideration of a denial of a requested variance for a project at 1215 Milfred Street that was presented at the at the October 5, 2023, meeting. Discussion will be at the end of this meeting.

7. Public Hearing Items

A. 509 Rye Lane (2023-268): Consideration of a variance request from Land Development Regulations (LDR) 4.6.15(G)(1), Swimming Pool, Whirlpools, and Spas: Yard Encroachment, to allow the construction of a new swimming pool within the front setback (adjacent to Enfield Road) at 15.8 feet, whereas a minimum setback of 30 feet is required.

Address: 509 Rye Lane

PCN: 12-43-46-08-06-000-0150

Property Owner: ADF Investments, LLC

Authorized Agent: Hugh Dean Fuller, hdfuller94@gmail.com

Planner: Alexia Howald, Senior Planner; howalda@mydelraybeach.com

Alexia Howald, Senior Planner, entered file 2023-268 into the record.

Exparte Communication

William Schloesser-None

Alek Hayes-None

Richard Kasser-None

Seth Mitchell-None

Aura Ramirez-None

Applicant Presentation

Hugh Dean Fuller-Property owner of 509 Rye Lane

Staff Presentation

Alexis Howald, Senior Planner, presented the project by means of a PowerPoint presentation.

Public Comments

None

Rebuttal/Cross Examination

None

Board Comments

Richard Kasser requested information about the newly installed PVC fence.

Seth Mitchell asked if any gates had been installed along Enfield Road to provide access to the yard. The applicant confirmed that while two gates had been installed, none were located along Enfield Road.

Alek Hayes confirmed with staff that the 30-foot front setback was measured along Enfield Road and noted that swimming pools require a 10-foot setback in both the rear and interior side yards. Ms. Hayes also mentioned that neighboring properties with similar lot layouts have installed pools without needing a setback. She inquired about the Land Development Regulations regarding tree removal and whether mitigation would be necessary. Staff indicated that an analysis would be required to determine if mitigation is needed.

MOTION to move approval of the Variance request for 509 Rye Lane (2023-268 VAR-BOA) from LDR Section 4.6.15(G)(1) to allow the construction of a new swimming pool within the front setback (adjacent to Enfield Road) at 15.8 feet, whereas a minimum setback of 30 feet is required, by finding that the request is consistent with the findings set forth in LDR Section 2.4.11(A)(5)(af), was made by Seth Mitchell and seconded by William Schloesser.

MOTION CARRIED 5-0

*Pursuant to LDR Section 2.2.4(D)(8), all decisions of the Board of Adjustment are final. Based on the entire record before it, the Board of Adjustment **APPROVES** X the variance solely for the purposes as presented at the meeting. The Board of Adjustment adopts this Order on this 7th day of December 2023.*

B. 442 Commodore Circle (2023-266): Consideration of a variance request from the Land Development Regulations (LDR) Section 4.6.15(G)(1), Swimming Pool, Whirlpools, and Spas: Yard Encroachment, to allow the construction of a new swimming pool to encroach into the front setback at 10 feet, whereas a minimum of 20 feet is required.

Address: 442 Commodore Circle

PCN: 12-43-46-33-15-000-0130

Property Owner/Authorized Agent: Glen and Kara Gammil;
glengammil@sbcglobal.net

Planner: Jennifer Buce; buce@mydelraybeach.com

Jennifer Buce, Planner, entered file 2023-266 into the record.

Exparte Communication

William Schloesser-None

Alek Hayes-None

Richard Kasser-None

Seth Mitchell-None

Aura Ramirez-None

Applicant Presentation

Glen Gammil, Property Owner

Staff Presentation

Jennifer Buce, Planner, presented the project by means of a PowerPoint presentation.

Public Comments

None

Rebuttal/Cross Examination

None

Board Comments

Seth Mitchell confirmed with the applicant that the existing pool encroaches into the front setback by 5 feet and extends 1 foot into the side drainage easement. Mr. Mitchell asked about the existing drainage easement and whether the Homeowners Association (HOA) had approved the proposed changes. The applicant indicated that the HOA supported the proposed changes.

Alek Hayes noted that the addition of an office requires shifting the proposed pool north into the front setback. Ms. Hayes noted that one of the criteria that the applicant must meet is that the need for the variance is at no fault of the applicant, William Bennett added that the Board must determine whether the requested variance results from the applicant's actions or is appropriate due to a unique condition of the property. Ms. Hayes also noted that the existing drainage easement affects where a structure can be installed

and that a letter from the HOA approving the proposed pool location was provided to the Board.

Richard Kasser asked staff if the applicant could build the pool further into the setback, exceeding the variance granted by the Board. Staff indicated that while legal nonconformities cannot be expanded, they can be reduced.

MOTION to move approval of the Variance request for 442 Commodore Circle (2023-266 VAR-BOA) from LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach into the front setback 10 feet where 20 feet is required, by finding that the request is consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f), was made by William Schloesser and seconded by Seth Mitchell.

MOTION CARRIED 5-0

*Pursuant to LDR Section 2.2.4(D)(8), all decisions of the Board of Adjustment are final. Based on the entire record before it, the Board of Adjustment **APPROVES** X the variance solely for the purposes as presented at the meeting. The Board of Adjustment adopts this Order on this 7th day of December 2023.*

8. Reports and Comment

A. City Staff

Board Members were provided with the meeting dates for 2024. The September meeting may be rescheduled due to Labor Day. The next meetings are scheduled for January 18, 2024, and February 1, 2024. Members will be notified a week prior if a meeting is to be canceled.

Amy Alvarez noted that recent changes in Chapter 2 of the Land Development Regulations stipulate that variances are only valid for 12 months from the approval date if not associated with a concurrent site plan approval and if a Building Permit has not been issued. If an approved variance is tied to an approved site plan, the variance becomes void upon the site plan's expiration. Additionally, Ms. Alvarez mentioned that the Board of Adjustment will only hear variance requests for single-family and duplex properties, while requests for commercial or multifamily properties will be addressed by the Planning and Zoning Board.

B. Board Attorney

William Bennett welcomed the new members of the Board and reminded them that ethics training must be completed and is valid for two years. He also mentioned that a Board training video will be provided soon for all members.

Mr. Bennett emphasized that any record created in furtherance of the Board becomes a public record, and all communications should be conducted via the assigned City email address.

Mr. Bennett provided a summary of Florida's Sunshine Laws, noting that decision-making and discussions regarding items likely to come before the Board must be conducted in public. He clarified that communications with City staff about specific projects are not subject to the Sunshine Laws and would be considered ex-parte communications.

C. Board Members

Alek Hayes inquired about the process for reconsidering a previously denied variance request. William Bennett explained that a motion to reconsider must be made at the same meeting or a subsequent meeting and can only be initiated by a member on the prevailing side of the original motion. He emphasized that motions to reconsider should be rare and noted that appeals to a denial are heard by the Circuit Court. Mr. Bennett also mentioned that none of the five Board members on the prevailing side of the original motion are present at this meeting, so a motion for reconsideration cannot be made.

Alek Hayes asked if visiting a site would be considered ex-parte communication. Mr. Bennett indicated that it would be considered ex-parte communication if the visit was conducted in furtherance of reviewing the application.

9. ADJOURN

There being no further business to come before the Board, the meeting was adjourned at 6:30pm.

The undersigned is the Secretary of the Board of Adjustments and the information provided herein is the Minutes of the meeting of said body for **December 7, 2023**, which were formally adopted and **APPROVED** by the Board on **July 18, 2024**.

ATTEST:



CHAIR



BOARD SECRETARY

NOTE TO READER: If the Minutes you have received are not completed as indicated above, then this means that these are not the official Minutes of the Board of Adjustments. They will become official minutes only after review and approval, which may involve some amendments, additions or deletions.